**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE SIDE**

**CRIMINAL APPLICATION NO.4230 OF 2006**

Pramod K. Shah .. Applicant.

V/s.

Commmissioner of Custom (Export Promotion S.I.I.B.(Export) & Anr. .. Respondent.

Shri.Subhash Jha i/b. Law Global with Shri.Y.Rohira for the applicant.

Shri.J.C.Satpute for respondent No.1.

Shri.S.S.Pednekar, A.P.P. for the State.

**CORAM : S.C.DHARMADHIKARI, J.**

**DATE : 18TH DECEMBER, 2006**

**P.C.:**

1. Heard Shri.Jha appearing for the applicant and Mr.Satpute appearing for the Commissioner of Custom - respondent Nos.1 & 3.

2. This is an application for anticipatory bail and

the respondent apprehends arrest in connection with an investigation F.No.SG/Misc-157/06 S.I.I.B.(X). He applied for anticipatory bail by filing Application No.1315 of 2006 in the Sessions Court, Greater Bombay.

3. The applicant argued the application for anticipatory bail on the basis that the offences alleged against him are bailable. He argued that the respondents have not made out any case of commission of any non-bailable offences but assuming it is so made out the applicant’s custodial interrogation would not be necessary.

4. From a perusal of the order passed by the learned Additional Sessions Judge on this anticipatory bail application on 24th November, 2006, it is clear that the learned Additional Sessions Judge proceeded on the basis that the offence is bailable but a judgement of the learned Single Judge of this court is not binding upon him as it is stayed by the Hon’ble Supreme Court.

5. To say the least, the learned Additional Sessions Judge has committed a grave error in not following the binding precedent. The precedent does not cease to be

binding merely because in the opinion of the learned Judge, the same is challenged in the Supreme Court and its operation stayed by the Supreme Court. In the decision reported in A.I.R. 1992 Supreme Court Page 1439 in the case of **M/s.Shree Chamundi Mopeds Ltd. v/s. Church of South India Trust Association, Madras**, the Hon'ble Supreme Court has very succinctly pointed out the difference between a judgement being quashed and set aside and its operation stayed by the higher court. The judgement being stayed does not wipe it out unless and until it is so wiped out, it continues to be binding on the lower and subordinate courts. Thus, the learned Judge ought to have decided the application on the touch stone of the law laid down by this court as also the Hon'ble Supreme court in other decisions brought to his notice.

6. Both sides agree that the anticipatory bail application having been decided only by negativing the aforementioned submissions of the applicant, it would be appropriate if the anticipatory bail application No.1315 of 2006 is restored to the file of the Sessions Court, Mumbai for disposal afresh on merits and in accordance with law. Needless to state that it would be open for the applicant to point out that the offence alleged is

bailable so also for the prosecution that it is not so. The applicant's custodial interrogation is wholly unnecessary is also an aspect which is open assuming the offence is non-bailable. All such aspects be decided and gone into by the learned Sessions Judge. He shall endeavour and dispose of the application as expeditiously as possible and in any event within a period of four weeks from the date of receipt of a copy of this order. Ad-interim protection granted by this court to the applicant on 27th November, 2006 to continue till anticipatory bail application is disposed of. However, the applicant to attend the concerned Investigating Officer's office as and when summoned.

**(S.C.Dharmadhikari, J.)**